

**REMARKS**

**Formalities**

Claims 168-193 are all the claims currently pending in the present Application.

Claim Amendments. With this Amendment, Applicants rewrite Claims 169, 170, 172, 173, 175, 176, 178, 179, 183, 185, 187, 188, 190, and 191 into independent form, including the limitations of the claims from which they depend. Applicants also amend Claim 174 to correct a minor typographical error.

Interview. A personal interview was conducted with Examiner Ronald Abelson and Examiner Chi Pham on September 28, 2005. A Statement of the Substance of the Interview follows.

**Statement of Substance of the Interview**

At the interview conducted on September 28, 2005, the outstanding §102(b) and §103(a) rejections of the Claims were discussed. The invention of the present application was discussed in view of the Marchetto reference and Applicants' Admitted Prior Art.

**Allowable Subject Matter**

In the Office Action, the Examiner indicates that Claims 170, 173, 176, 179, 183, 185, 188, and 191 contain allowable subject matter and would be allowed if rewritten into independent form including the limitations of the claims on which they depend. As noted above, these claims have been rewritten into independent form.

Therefore, Applicants respectfully request the allowance of Claims 170, 173, 176, 179, 183, 185, 188, and 191.

**Claim Rejections: §102 (Claims 168, 171, 174, 177, 186, and 189)**

Claims 168, 171, 174, 177, 186, and 189 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Marchetto et al., U.S. Patent No. 5,513,215 (“Marchetto”).

Regarding this rejection, Applicants submit that Marchetto fails to disclose or suggest the provision of a vacant period as recited in the claims.

Marchetto is generally directed to a simulcast data system in which pilot symbols, along with data symbols, are transmitted to a receiver. The receiver then uses the pilot symbols to determine the delay of a number of transmissions received via different transmission paths. The Examiner refers to the pilot symbols of Marchetto as disclosing the inserted pilot signals as recited in the present invention and asserts that Marchetto discloses providing a vacant period and inserting pilot signals, as recited in the above-named claims. However, contrary to the assertion of the Examiner, Marchetto clearly describes that prior to transmission, the pilot symbols are “appended to the data symbols to form a frame.” (Col. 20, lns. 28-31 and Fig. 9). Therefore, rather than creating a vacant period in a data transmission as required by the above-named claims, Marchetto clearly discloses that data symbols and pilot symbols are added together to form a frame for transmission, and fails to disclose or suggest the creation of any vacant period in any data transmission.

Further, while the Examiner asserts that Figure 8 of Marchetto discloses that a beginning of a pilot signal is contiguous with the end of a data transmission, Figure 8 clearly illustrates a

non-negligible gap between the end of a period of data symbols (172) and the beginning of a period of pilot symbols (178).

Therefore, in view of the above, Applicants submit that Marchetto fails to anticipate Claims 168, 171, 174, 177, 186, and 189 respectfully request that the rejection of these claims be reconsidered and withdrawn.

**Claim Rejections: §103(a) (Claims 169, 172, 175, 178, 180-182, 184, 187, 190, 192, and 193)**

Claims 169, 172, 175, 178, 180-182, 184, 187, 190, 192, and 193 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Marchetto et al., U.S. Patent No. 5,513,215 (“Marchetto”), in view of Applicants’ Admitted Prior Art (“AAPA”).

Regarding this §103(a) rejection, Applicants respectfully submit that one of ordinary skill in the art at the time of the presently-claimed invention would not have been motivated to combine Marchetto and AAPA as suggested by the Examiner because there is no suggestion of motivation for doing so in the references themselves or in the knowledge available to one of ordinary skill in the art without resorting to impermissible hindsight.

Marchetto describes that the poor reception quality experienced by the receiver is due to the overlapping of transmissions which have been received via varying transmission paths either because the transmissions are from more than one transmitter or because the transmission from a single transmitter has followed multiple paths prior to reception. There is no teaching or suggestion in Marchetto that a transmission power adjustment by a transmitter, as taught by AAPA and the present invention, would improve the reception quality at the receiver. Further, Marchetto teaches that the transmitters are “simulcasting” transmissions to a number of receivers

at various locations simultaneously. Therefore, any adjustment of the transmission power of a transmitter due to the poor reception at a single receiver would likely adversely affect the reception quality of another receiver at a different location.

Therefore, due to the disparity between Marchetto and AAPA, the only possible motivation for the Examiner's proposed combination is Applicant's own disclosure, the reliance on which constitutes impermissible hindsight reconstruction under MPEP §2143 (see also *In re Vaeck*, 20 USPQ 1438 (Fed. Cir. 1991)).

Therefore, in view of at least the above, Applicants submit that Claims 169, 172, 175, 178, 180-182, 184, 187, 190, 192, and 193 are patentable over the cited art and respectfully request that the rejection of these claims be reconsidered and withdrawn.

#### **Conclusion**


In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned attorney at the telephone number listed below.

**AMENDMENT UNDER 37 C.F.R. § 1.114(c)**  
U.S. Application No. 09/287,570

**Q53866**

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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**23373**

CUSTOMER NUMBER

Date: October 12, 2005